

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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4	RORY VAUGHN KEETON,	)	
5		)	No. CV-09-3103-CI
6	Plaintiff,	)	
7	v.	)	REPORT AND RECOMMENDATION FOR
8	MICHAEL J. ASTRUE, Commissioner	)	ORDER GRANTING PLAINTIFF'S
9	of Social Security,	)	MOTION FOR AN AWARD OF EAJA
10		)	ATTORNEY FEES
11	Defendant.	)	

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BEFORE THE COURT on Report and Recommendation is Plaintiff's Amended Motion for Attorney Fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (Ct. Rec. 33.) Attorney Elie Halpern represents Plaintiff; Special Assistant United States Attorney Thomas M. Elsberry represents Defendant. The parties have not consented to proceed before a magistrate judge.

On January 10, 2011, the court adopted the undersigned's Report and Recommendation and granted the parties' Stipulated Motion for Remand. The matter was remanded to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (Ct. Rec. 29, 30.) Judgment was entered for Plaintiff. (Ct. Rec. 31.) Plaintiff now moves for an award of attorney fees and expenses pursuant to EAJA and costs pursuant to 28 U.S.C. § 1920. (Ct. Rec. 33.) Defendant does not oppose the Motion. (Ct. Rec. 34 at 2.)

EAJA provides for an award of attorney fees to private litigants who both prevail in civil actions (other than tort) against the United States and timely file a petition for fees. 28 U.S.C. §

1 2412(d)(2)(A). Under EAJA, the court must award attorney fees to the  
2 prevailing party unless it finds the government's position was  
3 "substantially justified or that special circumstances make such an  
4 award unjust." 28 U.S.C. § 2412(d)(1)(A).

5 Plaintiff, as the prevailing party, seeks attorney fees of  
6 **\$5,288.23**, costs in the amount of **\$374.50**, and expenses in the amount  
7 of **\$41.18**. The award amount is based on Mr. Halpern's attorney fee  
8 rate of \$172.24 per hour for 2.6 hours worked in 2009 and an attorney  
9 fee rate of \$175.06 per hour for 8.5 hours worked in 2010; and based  
10 on Victoria Chhagan's attorney fee rate of \$175.06 for 19.15 hours  
11 worked in 2010. (Ct. Rec. 33 at 11-12.) Plaintiff's request is  
12 supported by counsels' itemized billing statement. *Id.* Defendant  
13 does not object to these rates or amounts. (Ct. Rec. 34 at 2.)  
14 However, citing *Astrue v. Ratliff*, 130 S.Ct. 2521 (2010), Defendant  
15 responds the award of fees must be paid directly to Plaintiff and not  
16 Plaintiff's attorneys. (*Id.* at 2-3.) In *Ratliff*, the Supreme Court  
17 held that "a § 2412(d) fees award is payable to the litigant and is  
18 therefore subject to a Government offset to satisfy a pre-existing  
19 debt that a litigant owes the United States." *Ratliff*, 130 S.Ct. at  
20 2524, 2529. Unless the agency receives verification that Plaintiff  
21 does not have outstanding federal debts that would qualify for offset  
22 of an EAJA award, and Plaintiff has made a valid assignment of the  
23 EAJA award, direct payment of an EAJA award to Plaintiff's counsel  
24 is not authorized. *Id.* at 2529.

25 Here, the record includes Plaintiff's declaration authorizing  
26 payment of EAJA fees directly to his attorney. (Ct. Rec. 23.)  
27 Defendant proposes the EAJA award be paid directly to Plaintiff's  
28 attorney only upon verification that Plaintiff has no debt which

1 qualifies for offset against the award, pursuant to the United States  
2 Treasury Offset Program, as described in *Ratliff*. (Ct. Rec. 34.) If  
3 no offset is due, Defendant agrees to send the EAJA award to Mr.  
4 Halpern at Halpern and Oliver, PLLC, 1800 Cooper Pt. Road SW,  
5 Building #19, Olympia, Washington 98502. Plaintiff does not object  
6 to this proposal. Accordingly,

7 **IT IS RECOMMENDED:**

8 1. The court **GRANT** Plaintiff's Amended Motion for EAJA fees  
9 (Ct. Rec. 33);

10 2. The court direct payment of EAJA fees in the amount of  
11 **\$5,288.23**, to Plaintiff, subject to any offset under the Treasury  
12 Offset Program.

13 3. The court direct the Commissioner pay costs in the amount  
14 of \$374.50, and expenses in the amount of \$41.18 directly to Mr.  
15 Halpern at the address above.

16 **IT IS FURTHER RECOMMENDED** if the Commissioner determines there  
17 is no outstanding debt subject to offset pursuant to the Treasury  
18 Offset Program, the court direct the Commissioner to award EAJA  
19 attorney fees in the amount of **\$1,935.83**, payable directly to  
20 attorney Elie Halpern, to be mailed to the address above; and award  
21 EAJA attorney fees in the amount of **\$3,352.40**, payable directly to  
22 attorney Victoria Chhagan, also to be mailed to address above.

23 The Clerk of the Court is directed to file this Order and  
24 provide a copy to counsel for Plaintiff and Defendant. The file  
25 shall be **CLOSED**.

26 DATED March 11, 2011.

27 S/ CYNTHIA IMBROGNO  
28 UNITED STATES MAGISTRATE JUDGE